THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21343 OF 2006

DATED: 30th October, 2006.

Between :

M/s. Kalpana Restaurant & Bar, Adilabad,
Rep. by its Managing Partner K. Rakesh Reddy .. Petitioner

And

1. The Prohibition & Excise Superintendent,
   Adilabad, Adilabad District.
   And 2 others. … Respondents

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ORDER :

The petitioner was granted a licence in Form-2B under the provisions of Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 for the year 2005-06 and accordingly operated a Bar and Restaurant in the premises bearing Door No.3-1-277/11/A, near Bus-stand, Adilabad. It is stated that as a matter of fact from the year 2001 onwards the petitioner Bar and Restaurant has been in existence in the said premises under valid licence.

For the year 2006-2007 also, the petitioner made an application for grant of licence proposing to run the Bar in the same premises. However, the 2nd respondent – Deputy Commissioner of Prohibition & Excise by order dated 6-10-2006 rejected the prior clearance to the petitioner on the ground that the premises in question is situated just adjacent to an educational institution by name Pragathi Junior College, which is a branch of main college situated at Santhi Nagar, Adilabad City. Aggrieved by the same, this writ petition is filed.

I have heard the learned Counsel for both the parties.

The learned Counsel for the petitioner contended that Pragathi Junior College which is actually situated at Santhi Nagar, Adilabad is not authorized to conduct any classes in the premises adjacent to the petitioner's bar and restaurant. The learned Counsel also submitted that at the instance of the sitting M.L.A. of the Legislative Assembly the Correspondent, Pragathi Junior College had opened the branch just

adjacent to the petitioner's bar and restaurant only to disentitle the petitioner for grant of Form-2B licence.

Though no counter-affidavit is filed, the learned Government Pleader for Prohibition & Excise placed before this Court the relevant record and submitted that the impugned order dated 6-10-2006 was passed after due enquiry into factual position.

However, from the record placed before this Court, it is observed that the Prohibition & Excise Superintendent, Adilabad in his report dated 5-10-2006 which categorically stating that there are no educational institutions recognized by the Government, within the prohibited distance as laid down in Rule 6 of the Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Andhra Pradesh Excise (Grant of License of Selling by Bar and Conditions of Licence) Rules, 2005 and that the proposed premises is situated in commercial area on the main road used for shopping purposes recommended for grant of licence.

It was also stated by the Prohibition & Excise Superintendent, Adilabad that the Regional Inspection Officer, Board of Intermediate Education, Adilabad had informed that the Pragathi Junior College was authorised in Door No.1-2-54-4/5/1 at Shanthi Nagar, Adilabad town, but the Correspondent has been running a college near the Bus-stand, Adilabad unauthorisedly.

In view of what has been stated in the report of the Prohibition & Excise Superintendent and keeping in view the definition of the Educational Institution under Explanation (b) to Rule 6 (1) of the Rules, I am of the opinion that the grounds on which the prior clearance was rejected to the petitioner being without basis, are untenable and cannot be accepted.

Accordingly, the impugned order dated 6-10-2006 is set aside and the Writ Petition is disposed of with a direction to the 2nd respondent to consider the request of the petitioner for prior clearance to run bar and restaurant in the premises in question afresh and pass

appropriate orders in accordance with law. The petitioner is granted liberty to make an appropriate representation within one week from today along with the relevant material to substantiate his claim that the premises in question is not situated within the prohibited distance of 100 mts. from the educational institution as provided under Rule 6 of the Rules. On receipt of such representation, the 2nd respondent shall consider the same and pass appropriate orders within two weeks thereafter. No costs.

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G. ROHINI, J.

Dt. 30-10-2006

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Note: - CC in 2 days.